No. 87-570

Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1987

NICHOLAS COLAFELLA, K. LEROY IRVIS, JAMES J. MANDERINO, MATTHEW J. RYAN, AND THE BI-PARTISAN COMMITTEE FOR THE ADMINISTRATION OF THE HOUSE OF REPRESENTATIVES,

Petitioners,

v.

THE UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF OF THE ALASKA LEGISLATIVE COUNCIL AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

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STATEMENT OF QUESTION PRESENTED FOR REVIEW

Whether a common law immunity based on speech or debate considerations protects an investigating committee of the Pennsylvania House of Representatives from forced disclosure of documents to a grand jury by subpoena duces tecum, where no member of the state legislature is the target of any federal investigation?

INTEREST OF THE AMICUS

Amicus is a permanent interim legislative committee, the Alaska Legislative Council, primarily charged by law with the administration of the legislative branch of government for the State of Alaska. The Alaska Legislative Council, amicus, is composed of duly

elected members of the House of Representatives and of the Senate empowered to legislate for the public good in the State of Alaska.

Crucial to the formation of legislation that serves the public good is enlightened debate on a wide range of issues. This requires effective investigation by the legislature and its various committees. In order for legislative investigation to be effective it is necessary that the legislature remain free from influence, harassment and threat of disruption from the executive and judicial branches of both state and federal governments. Amicus may need to undertake fact-finding investigations to support effective legislation.

Investigations of other state legislatures and legislative committees have been hampered by subpoenas served by state and federal entities. These subpoenas have interfered with the efficiency of investigations and distracted members of the investigating committees and their staff, requiring expenditures of time and money in complying with or moving to quash the subpoenas.

The continued viability of the Third Circuit decision will enable any United States Attorney to subpoena a state legislature's records and force any or all members of a legislature to appear before a grand jury at any time. Additionally, the decision below allows the United States Attorney to send a subpoena periodically to obtain updates

on the legislature's deliberations, investigations, and hearings, including executive sessions. The potential for disruption of ongoing legislative fact-finding is very dangerous.

The continued viability of the decision of the Third Circuit will adversely affect the interests of the amicus in pursuing fact-finding necessary to legislate for the public good. Amicus submits that the decision below is erroneous. Because this Court's decision will have a direct impact on matters of prime importance to amicus, amicus submits this brief to assist this Court in resolution of this important matter.

Pursuant to Rule 36 of Rules of the Court, the parties have consented to the filing of this brief. Their letters

of consent have been filed with the Clerk of the Court.

ARGUMENT

The Third Circuit decision involves an important question of federal law directly implicating the public interest which needs to be settled by this Court. The consequences of continued viability of the Third Circuit decision adversely affect not only the Pennsylvania House, but other state legislatures as well, including the legislature of the State of Alaska of which amicus is a committee.

The Third Circuit decision conflicts in principle with this Court's pronouncements in Tenney v. Brandhove, 341 U.S. 367 (1951), United States v.

Johnson, 383 U.S. 169 (1966), and, possibly, Eastland v. U.S.S.F., 421 U.S. 491 (1974). The Third Circuit decision conflicts in principle with the decision of the Second Circuit Court of Appeals in Star Distributors, Ltd. v. Marino, 613 F.2d 4 (2d Cir. 1980).

The Third Circuit decision is premised upon United States v. Gillock, 445 U.S. 360 (1980), the implications of which are in need of clarification. The merits of this important question were decided erroneously by the Third Circuit.

CONCLUSION

The amicus respectfully requests the Court to grant the petition

for a writ of certiorari.

Respectfully submitted,

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November 4, 1987